[JOINT COMMITTEE PRINT]

DESCRIPTION OF ISSUE AREAS
RELATING TO
EFFORTS TO REDUCE TAXPAYER BURDENS

SCHEDULED FOR A HEARING

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT OF THE
INTERNAL REVENUE SERVICE

OF THE

SENATE COMMITTEE ON FINANCE

ON

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PREPARED BY THE STAFF

OF THE

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INTRODUCTION

The Senate Finance Subcommittee on Oversight of the Internal Revenue Service has scheduled a public hearing on May 20, 1983, on efforts to reduce taxpayer burdens.

In announcing the hearing, Senator Charles Grassley (Subcommittee Chairman) noted the following particular areas of concern to the Subcommittee:

(1) How much progress has the IRS made in reducing the complexity of tax forms and their instructions?

(2) How well has the Paperwork Reduction Act served to stimulate reduced complexity in IRS forms?

(3) Should taxpayer assistance programs be maintained or modified?

(4) Does the IRS provide timely and accurate advice to taxpayers? Can the ruling and regulations process be improved?

(5) Does the current regulations backlog create problems for taxpayers? If so, how is that backlog to be reduced?

(6) Should the IRS explore amnesty arrangements with nonfilers like those adopted by various States to bring such taxpayers into the tax system?

(7) Are the taxpayer safeguard amendments of TEFRA adequate? If not, how may they be improved?

The first part of the pamphlet is a summary of these issue areas. The second part describes these areas in more detail.

I. SUMMARY

Tax Forms Simplification

The IRS conducts a continuing review of forms and instructions, and all major tax forms are reviewed and updated annually. The IRS also maintains full-time personnel for the purpose of improving the readability of tax forms and instructions. Several programs, including the taxpayer service quality review program, the math error detection program, the unallowable items program, the taxpayer compliance measurement program, and the problem resolution program assist the IRS in spotting problems in tax forms and instructions.

Recent IRS efforts to reduce the complexity of tax forms and instructions have included efforts to simplify the Form 1040 and revisions to other income tax and reporting forms and instructions. In an effort to reduce further the complexity of the individual income tax return, the IRS recently introduced Form 1040EZ (for the 1982 tax year).

Paperwork Reduction Act of 1980

One of the primary purposes of the Paperwork Reduction Act is to minimize the Federal paperwork burden for individuals, small businesses, State and local governments, and other persons. The Act provides that each Federal agency is responsible for carrying out its information management activities in an efficient, effective, and economical manner, and for complying with the information policies, principles, standards, and guidelines provided by the Director of the Office of Management and Budget. In general, no Federal agency may conduct or sponsor the collection of information until it has received approval by the Director of the Office of Management and Budget (OMB).

Taxpayer Services

IRS taxpayer assistance ranges from interpreting technical provisions of the tax law and assisting taxpayers in preparing their returns to answering questions on tax account status and furnishing forms requested by taxpayers. Taxpayer assistance is provided by three principal methods: (1) assistance to taxpayers who walk into an IRS office; (2) telephone assistance; and (3) education programs directed toward special groups.

Furthermore, since 1977, the IRS has operated a special Problem Resolution Program (PRP) to handle situations in which normal procedures are considered inadequate.

Regulations and Rulings

The principal methods used by the IRS to interpret the tax law are regulations, revenue rulings, and revenue procedures. Tax reg-

ulations are of two broad types: (1) interpretative regulations, which advise taxpayers of the Treasury's interpretations of the law; and (2) legislative regulations, which provide the detail necessary to implement rules of law pursuant to specific Congressional grants of rulemaking authority.

The IRS also publishes revenue rulings and procedures, which are binding upon the IRS and which may be cited as precedents by taxpayers. Revenue rulings generally apply the tax law to a specific fact pattern.

Taxpayer Amnesty Arrangements

At least one State has used amnesty arrangements under which taxpayers who voluntarily report previously unreported income are protected from criminal prosecution for tax evasion. From 1934–1951, the IRS followed a case-by-case practice of not recommending criminal prosecutions in cases in which taxpayers made voluntary disclosures before investigation by the IRS had begun.

Taxpayer Safeguard Provisions

During its consideration of the Tax Equity and Fiscal Responsibility Act of 1982, Congress addressed several problem areas related to the collection of taxes by the IRS.

First, in recognition of the hardships faced by taxpayers during the collection process, the dollar amounts of items of a taxpayer's property that are exempt from levy were increased.

Second, a statutory time limit with respect to when a lien against property must be released was imposed.

Third, the law was amended to require that a taxpayer be provided with written notice before a levy upon property.

Fourth, the period of time for redeeming real property that has been sold after being seized was extended.

Finally, the law was amended to provide that, in the case of a wrongful sale of property by the United States, a third party will be allowed to recover an amount not in excess of the fair market value of the property immediately before levy. In addition, the conferees on TEFRA requested the IRS to consider the sufficiency and timeliness of information sent to taxpayers regarding their rights during examination, appeals, and collection.

II. DESCRIPTION OF ISSUE AREAS

A. Tax Forms Simplification

In General

For most taxpayers, tax complexity relates primarily to the number and difficulty of tax forms, schedules, and instructions. In many respects, the complexity of a particular form and its instructions merely reflects the complexity of the statutory provisions that give rise to the need for the form. For example, an individual who wishes to utilize ten-year forward income averaging on certain distributions from qualified pension, etc., plans is required by statute to complete a complicated series of calculations to compute his tax liability. The IRS form (Form 4972) designed for this purpose, although complex, assists the taxpayer in satisfying the statutory requirements.

The IRS conducts a continuing review of forms and instructions. All major tax forms are revised and updated annually. In addition, several other IRS programs are useful in spotting problems attributable to tax form design or the instructions. These programs include the taxpayer service quality review program, the math error detection program, the unallowable items program, the taxpayer compliance measurement program, and the problem resolution program.

The IRS also maintains full-time personnel devoted to improving the readability of forms and instructions. These individuals are not technical specialists in the tax laws and, therefore, examine forms and instructions from the perspective of the average taxpayer. Although there are problems in calculating readability numerically, the IRS has measured the readability of certain high volume tax returns and has translated that readability into a grade level. For example, the readability level of Form 1040A (the short form individual income tax return) is tenth grade. This means that an individual who reads at about the level of a tenth grade student should be able to understand a majority of words in the document. The readability level, however, does not mean that the individual is capable of understanding all of the ideas or concepts presented in the document. It is estimated that approximately one half of the taxpayers in the country have at least a tenth grade reading level.

Recent IRS efforts to reduce the complexity of tax forms and their instructions have included efforts to simplify the Form 1040 series (the individual income tax form) and major revisions to other income tax and reporting forms and instructions. In addition, the IRS is considering changes to other forms for tax years 1983 and 1984.

Form 1040

Form 1040 has developed from a four-page form with one-half page of instructions in 1913 to a two-page form with 48 pages of instructions in 1982. The trend toward a shorter form is offset by the requirement that a taxpayer affix additional information (schedules) to the form to list or substantiate deductions, credits, etc. Form 1040A (the short form) was developed to permit taxpayers with relatively simple tax return information to avoid the complexity of Form 1040.

For tax year 1982, the IRS introduced Form 1040EZ in an effort to reduce further the complexity, and improve the readability, of the individual income tax return. This form can be used by single taxpayers who claim no dependents or additional personal exemptions on their returns, have less than $50,000 taxable income derived solely from wages, salaries, tips, and interest, and have no more than $400 of interest income. Form 1040EZ is estimated to have a seventh grade readability level. Completion of the form requires only four arithmetical calculations and use of the tax tables to figure out how much tax is owed.

The IRS has determined that approximately 22 million taxpayers (20–25 percent of all returns filed) are eligible to use Form 1040EZ. In an effort to promote use of the form, the IRS included Form 1040EZ with all mailings to taxpayers of Form 1040A. In addition, Form 1040EZ was placed in front of Form 1040A in the instruction booklet and the cover page stated in large bold-face type: "Are you single? See if you can use the new Form 1040EZ."

Utilization of Form 1040EZ for 1982 has exceeded IRS estimates. To date, the IRS has received nearly 15 million returns filed on Form 1040EZ. In addition, reviews of the forms filed indicate that the new form is being completed accurately by the overwhelming majority of filers. Form 1040EZ has about a 4½-percent error rate compared to a 10-percent error rate for the Form 1040A.

Critics of Form 1040EZ argue that the fact that use of the form exceeds IRS expectations indicates that some taxpayers who should be using Form 1040A or Form 1040 instead are filing Form 1040EZ because it is easier for them to understand. For example, taxpayers who pay babysitters to care for their children while they work must file Form 1040 to claim a child care credit. However, these taxpayers, if they are eligible otherwise to use Form 1040A or Form 1040EZ, may be likely to file the simpler return. Therefore, the argument is made that the IRS should concentrate on simplifying Form 1040 rather than designing a new form that may lead some lower-income taxpayers not to take certain allowable credits or deductions.

The IRS has estimated that Form 1040EZ will reduce taxpayer reporting burdens by more than 7 million hours. The taxpayer reporting burden measures the total time it takes a taxpayer to complete a form, including time to read and study the instructions.

Other changes have been made to the Form 1040 series. In 1978, Congress instructed the IRS to seek assistance in simplifying tax forms. In 1979, the IRS awarded two contracts totalling nearly $2 million to a New York consulting organization to develop alternative tax forms designed for the convenience of the taxpayer. The

contractor tested its alternative forms and found that people made few mistakes and considered the new forms superior to the old. The IRS was able to adopt a number of the contractor's techniques into its own testing program. By integrating the results of the contractor's tests with pre-existing Form 1040A, the IRS has rewritten completely Form 1040A (the short form) and instructions with new language, format, and graphics. The forms and instructions now present, and call for, information on a step-by-step basis. Additionally, the IRS is considering changes for tax year 1983 that would expand the categories of taxpayers eligible to use Form 1040A. Thus, for example, taxpayers claiming a child care credit or Individual Retirement Arrangement (IRA) deduction or reporting fully taxable pensions or annuities and certain itemized deductions also would become eligible to file Form 1040A, provided they meet the other criteria for filing that form.

Changes to Schedule A (the itemized deduction schedule) have created a simplified, one-column format. The IRS estimates that this change resulted in a taxpayer reporting burden reduction of 6.4 million hours. Major revisions to other income tax schedules for 1982 resulted in an estimated 15 million hour taxpayer reporting burden reduction, according to the IRS.

Other Forms

The IRS recently has revised or eliminated the following other tax forms in an effort to reduce taxpayer reporting burdens:

1. Form 2106 (Employee Business Expenses) was reduced to one page with an estimated taxpayer reporting burden reduction of almost 3 million hours.

2. For tax year 1983, the present Forms 1099 and 1087 information return series will be consolidated and the present thirteen Forms 1099, six Forms 1087, and one Form 4347 will be replaced by nine Forms 1099.

3. The 941 series of employment tax returns were revised to eliminate two columns ("date of deposit" and "amount deposited") with an estimated taxpayer reporting burden reduction of approximately eight million hours.

For the 1984 tax year, the Service is considering a short form corporate income tax return (Form 1120–A). An estimated 5.8 million hour taxpayer reporting burden reduction would be accomplished by reducing the amount of information collected and by raising the threshold filing requirements for the submission of detailed information by corporations.

B. Paperwork Reduction Act of 1980

Purpose of the Act

The purposes of the Paperwork Reduction Act of 1980 [1] are:

(1) to minimize the Federal paperwork burden for individuals, small businesses, State and local governments, and other persons;

(2) to minimize the cost to the Federal government of collecting, maintaining, using, and disseminating information;

(3) to maximize the usefulness of information collected by the Federal government;

(4) to coordinate, integrate, and, to the extent practicable and appropriate, make uniform Federal information policies and practices;

(5) to ensure that automatic data processing and telecommunications technologies are acquired and used by the Federal government in a manner which improves service delivery and program management, increases productivity, reduces waste and fraud, and, wherever practicable and appropriate, reduces the information processing burden for the Federal government; and

(6) to ensure that the collection, maintenance, use, and dissemination of information by the Federal government is consistent with applicable laws relating to confidentiality, including the Privacy Act.

The provisions of the Paperwork Reduction Act apply, generally, to all agencies of the Federal government. Discussed below are those provisions that have particular relevance to the Internal Revenue Service.

Federal Agency Responsibilities

The Paperwork Reduction Act provides that each Federal agency is responsible for carrying out its information management activities in an efficient, effective, and economical manner, and for complying with the information policies, principles, standards, and guidelines provided by the Director of the Office of Management and Budget (44 U.S.C. sec. 3506). Furthermore, each agency is required to designate a senior official to carry out the agency's responsibilities under the Act.

In addition, each Federal agency must perform the following functions:

(1) systematically inventory its major information systems and periodically review its information management activities, including planning, budgeting, organizing, directing, training, promoting, controlling, and other managerial activities involving the collection, use, and dissemination of information;

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[1] Public Law 96-511 (44 U.S.C. secs. 3501-3520).

(2) ensure its information systems do not overlap each other or duplicate the systems of other agencies;

(3) develop procedures for assessing the paperwork and reporting burden of proposed legislation affecting such agency;

(4) assign to the senior official who has the task of carrying out the agency's responsibilities under the Act the responsibility for the conduct of, and accountability for, any acquisitions made pursuant to a delegation of authority under the Federal Property and Administrative Services Act of 1949; and

(5) ensure that information collection requests required by law or to obtain a benefit, and submitted to nine or fewer persons, contain a statement to inform the person receiving the request that the request is not subject to approval by the Director of OMB.

Public Information Collection Activities

Under the Paperwork Reduction Act, a Federal agency may not conduct or sponsor the collection of information until it has been approved by the Director of OMB of the information collection request (44 U.S.C. sec. 3507)[2]

Specifically, before an agency conducts or sponsors the collection of information it must (1) eliminate, through the use of the Federal Information Locator System and other means, information collections which seek to obtain information available from another source within the Federal Government; (2) reduce to the extent practicable and appropriate the burdens on persons who will provide information to the agency; and (3) formulate plans for tabulating the information in a manner which will enhance its usefulness to other agencies and the public. An explanation of the actions taken to carry out these requirements must be submitted to the Director of OMB, along with the proposed information collection request. Furthermore, the agency must prepare a notice to be published in the Federal Register stating that it has made these submissions to OMB.

In general, an agency may not undertake the collection of information until the Director of OMB has approved the information collection request or the period for reviewing the information collection request has elapsed. An information collection request may not be approved for a period in excess of three years. Furthermore, an agency may not engage in the collection of information without obtaining from the Director a control number to be displayed upon the information collection request.

The Director of OMB must, within 60 days of receipt of a proposed information collection request, notify the agency involved of the decision to approve or disapprove of the request. If a proposed information collection request cannot be reviewed within 60 days,

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[2] Collection of information means the obtaining or soliciting of facts or opinions by an agency through the use of written report forms, application forms, schedules, questionnaires, reporting or recordkeeping requirements, or other similar methods calling for either (1) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons, other than agencies, instrumentalities, or employees of the United States; or (2) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes (44 U.S.C. sec. 3502(4)). An information collection request is a written report form, application form, schedule, questionnaire, reporting or recordkeeping requirement, or other similar method calling for the collection of information (44 U.S.C. Sec. 3502(ii)).

then the Director may extend the review period for 30 days. If the Director does not notify the agency of an extension, denial, or approval within 60 days (or, if the Director has extended the review period for an additional 30 days and does not notify the agency of a denial or approval within the extension period), a control number will be assigned, OMB approval may be inferred, and the agency may collect the information for not more than one year.

The Act authorizes the Director of OMB to delegate to the senior official who is designated to carry out the agency's responsibilities under the Act the authority to approve proposed information collection requests in specific program areas, for specific purposes, or for all agency purposes. This delegation of authority does not preclude the Director from reviewing individual information collection requests if the Director determines that circumstances warrant such a review.

In certain circumstances, the Director of OMB may authorize the collection of information prior to the expiration of the 60-day review period for information collection requests. This authority may be granted if an agency head determines a collection of information (1) is needed prior to the expiration of the 60-day review period, (2) is essential to the mission of the agency, and (3) the agency cannot reasonably comply with the provisions of the Act within a 60-day period because public harm will result if normal clearance procedures are followed, or an unanticipated event has occurred and the use of normal clearance procedures will prevent or disrupt the collection of information related to the event or will cause a statutory deadline to be missed. The Director must approve or disapprove such authority within the time requested by the agency head. If approved by the Director, a control number will be assigned to the information collection request and the collection of information may be conducted without compliance with the provisions of the Act for up to 90 days after the date on which the Director received the request to authorize such information collection.

Determination of Necessity for Information

The Act provides that before the Director of OMB approves a proposed information collection request, he must determine whether the collection of information by the agency is necessary for the proper performance of the agency's functions, including whether the information will have practical utility (44 U.S.C. sec. 3508). Furthermore, before making any determination, the Director may give the agency and other interested persons an opportunity to be heard or to submit statements in writing. To the extent, if any, the Director determines that the collection of information is unnecessary, for any reason, the agency may not engage in the collection of information.

Proposed Rulemaking

The Act requires that, no later than the date of publication of a notice of proposed rulemaking in the Federal Register, each agency must forward to the Director of OMB a copy of any proposed rule that contains a collection of information requirement (44 U.S.C. sec. 3504(h)). The Director may file public comments on the collection of information requirements contained in the proposed rule

within 60 days after the notice of proposed rulemaking is published in the Federal Register.

When a final rule is published in the Federal Register, the agency must explain how any collection of information requirement contained in the final rule responds to the comments, if any, filed by the Director or the public, or explain why it rejected those comments. The Director may not disapprove any collection of information requirement specifically contained in any agency rule, if he has received notice and failed to comment on the rule within 60 days of the notice of proposed rulemaking.

Effect on Existing Law and Regulations

The Act provides that an agency's authority to issue regulations for Federal information activities is subject to the authority conferred by the Act upon the Director of OMB (44 U.S.C. sec. 3518).

C. Overview of Taxpayer Services Provided by the Internal Revenue Service

1. Programs under the Assistant Commissioner of Internal Revenue (Returns and Information Processing)

In general

The Internal Revenue Service conducts a year-round tax information program in each of its 7 regions, 63 internal revenue districts, 10 internal revenue service centers, and in various foreign countries (through the IRS Office of International Operations). The basic assistance part of the program is operated by a Taxpayer Service division under the supervision of the Assistant Commissioner of Internal Revenue (Returns and Information Processing). Assistance ranges from interpreting technical provisions of the tax law and assisting taxpayers in preparing their returns to answering questions on tax account status and furnishing forms requested by taxpayers.

Taxpayer assistance is provided by three principal methods: (1) telephone assistance; (2) assistance to taxpayers who walk into an IRS office; and (3) taxpayer information and education programs, including programs directed toward special groups.

Telephone assistance

A toll-free telephone network allows taxpayers to call IRS personnel for tax assistance. This service covers all of the United States, Puerto Rico, and the Virgin Islands. In addition, toll-free assistance is provided to deaf and hearing-impaired taxpayers through a television/telephone/teletypewriter system. During 1982, the IRS responded to 39.2 million telephone inquiries.[3]

Walk-in taxpayer assistance

The walk-in taxpayer assistance program is available both at permanent and temporary (during the filing season) sites located throughout the country. During 1982, the IRS responded to 8.1 million requests under this program.[4] The scope of the program includes answering taxpayer questions, furnishing tax forms and publications, and assisting in preparation of returns for taxpayers.

Additionally, in 1982, a three-hour IRS tax clinic, entitled "Your Tax Return: The Bottom Line on Improving Your Form", was aired nationally by 184 public broadcasting stations during the filing season. The program, viewed in approximately 3.1 million households, focused on how to complete a tax return. The program also encouraged viewers to telephone the IRS on its toll-free system with their questions.[5]

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[3] Source: 1982 Annual Report, Commissioner and Chief Counsel, Internal Revenue Service.
[4] Ibid.
[5] Ibid.

Taxpayer information and education

In addition to its telephone and walk-in assistance programs, the IRS conducts a year-round public information program with special emphasis on the filing period (January through April). This program includes training participants in several volunteer programs and supervising the programs, directing educational programs for taxpayers, and preparing media efforts for targeted groups and the general public.

The Volunteer Income Tax Assistance Program (VITA), begun in 1969, provides assistance in completing tax returns to low-income, elderly, and non-English speaking persons who may have difficulty obtaining assistance from paid tax return preparers or IRS walk-in assistance personnel. Community volunteers are trained by the IRS in simple tax return preparation skills. The individuals then offer free tax return preparation assistance in neighborhood locations throughout the country.

Tax Counseling for the Elderly, a similar volunteer program, was established by the Revenue Act of 1978 to help meet the special tax needs of persons aged 60 and older. Under this program, the IRS enters into agreements with selected nonprofit organizations which provide volunteers to furnish tax assistance to the elderly. The volunteers are reimbursed by the IRS, through the sponsoring organizations, for out-of-pocket expenses incurred in providing the assistance.

The Student Tax Clinic Program is conducted at certain colleges and universities across the country. Under this program, law and graduate accounting students represent low-income taxpayers before the IRS in examination and appeals proceedings.

Small Business Workshops are conducted in each internal revenue district to educate small businessmen, and institutes are available in most districts for tax practitioners on recent tax developments which may affect them.

Disaster and Emergency Assistance Programs are conducted by IRS in cooperation with other government agencies to provide specialized tax assistance to recent victims of major disasters and emergencies.

The "Understanding Taxes" program provides free student publications to high schools. Additionally, under this program, IRS employees also meet with teachers to explain the publications and answer questions on tax laws and procedures.

2. Forms and Publications Program Under the Assistant Commissioner of Internal Revenue (Support and Services)

The IRS regularly reviews and publishes all forms and schedules necessary for filing returns for the various taxes imposed under the Internal Revenue Code. These forms range from the Form 1040 (income tax) to Form 706 (estate tax) and Form 720 (excise taxes). For the 1982 tax year, the IRS introduced a new Form 1040EZ, which has fewer lines than previous income tax forms. This form can be used by an estimated 22 million single taxpayers.[6]

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[6] Ibid.

In addition, the IRS publishes and distributes, free-of-charge, more than 90 booklets—three in Spanish—on specific tax topics. These booklets are reviewed and revised to reflect the most recent changes in the tax law.

3. Problem Resolution Program and Office of the Taxpayer Ombudsman

In 1977, the Internal Revenue Service implemented a taxpayer complaint handling system, known as the Problem Resolution Program (PRP), in each of its districts. Under this program, there is a problem resolution officer in each district who reports directly to the district director. In 1979, this program was expanded to cover all internal revenue service centers, as well as district offices.

The program was established to handle taxpayers' problems and complaints not promptly or properly resolved through normal administrative procedures, or those problems which taxpayers believe have not received appropriate attention. In addition, the program provides for the analysis of problems resolved by it to determine their underlying causes so corrective action can be taken to prevent their recurrence.

In 1979, the IRS established a Taxpayer Ombudsman in the Office of the Commissioner of Internal Revenue. The Ombudsman works under the direct supervision of the Deputy Commissioner of Internal Revenue. The responsibilities of the Ombudsman include the administration of the Problem Resolution Program; representation of taxpayer interests and concerns within the IRS decision-making process; review of IRS policies and procedures for possible adverse effects on taxpayers; proposal of ideas on tax administration that will benefit taxpayers; and representation of taxpayer views in the design of tax forms and instructions.

D. Description of Procedures Relating to the Issuance of Treasury Regulations and Rulings

The principal methods used by the Internal Revenue Service to interpret the tax law are regulations adopted as Treasury decisions and revenue rulings and procedures. Both Treasury decisions and revenue rulings and procedures may be cited by taxpayers as precedent, i.e., they apply to all similarly situated taxpayers. Moreover, the position taken in regulations, revenue rulings, and revenue procedures generally is binding on the IRS.

Tax regulations are of two broad types. First, interpretative regulations advise taxpayers of the Treasury's interpretation of statutory law. Second, legislative regulations provide the detail necessary to implement rules of law pursuant to specific Congressional grants of rulemaking authority. Most tax regulations are interpretative. Additionally, tax regulations are entitled to a presumption of correctness in court proceedings.

1. Procedures for adoption of tax regulations

Tax regulations are adopted after detailed consideration by the Office of Chief Counsel for the IRS, nearly all functions of IRS, and the Treasury Department Office of Tax Policy. Primary responsibility for drafting regulations and coordinating their adoption is assigned to the Office of Chief Counsel for the IRS. The Office of Chief Counsel issues a monthly status report and a semi-annual agenda on pending regulations.

Development of proposed regulations

Most tax regulations are developed in response to new legislation; however, some regulations result from internal review of existing regulations or suggestions received from the public.

When a regulations project is opened, it is assigned to a category based primarily upon the policy considerations raised by the tax issues involved and to a lesser extent upon the complexity of the tax issues. A preliminary draft of a regulation is prepared in the Office of Chief Counsel and circulated to designated IRS offices for review and comments. Depending on the category to which the regulation is assigned, intensive review for legal accuracy, as well as tax policy, may take place in the Treasury Department's Office of Tax Policy or in the IRS Regulatory Review Group.

When comments are received from all affected offices, a draft notice of proposed rulemaking is forwarded for final approval before publication. After all necessary approvals are secured, the proposed regulation is published in the Federal Register together

with a request for written comments from members of the public, and notice that a hearing will be held upon request.[7]

Public comment on proposed regulations

Generally, the period allowed for public comment on a proposed regulation is 60 days; however, if public interest warrants, this period may be extended by notice published in the Federal Register. If requests for a public hearing are received, a separate notice is published in the Federal Register announcing the date and time of the hearing. Usually, 30-days notice of the hearing date is provided. The public hearing is the final step in the formal process for public input into the regulatory process.

Final approval and publication of regulations

After all formal input is completed, the regulation process continues with preparation of a proposed Treasury decision. This proposed Treasury decision generally is circulated, reviewed, and approved in the same manner as the proposed regulation. After final approval is secured, the regulation is adopted and published in the Federal Register as a Treasury decision.

2. Other requirements affecting preparation of regulations

Executive Orders 12096 and 12291

Treasury Directive 50.04F, implementing Executive Order 12096, requires that a regulatory analysis be prepared before development of any regulation whose economic impact is estimated to exceed $50 million. The economic impact of a regulation is determined by reference to requirements imposed by the regulation rather than by reference to statutory requirements.

Executive Order 12291 imposes certain requirements with respect to the issuance of regulations, including: (1) the publication of a semi-annual agenda of regulations; (2) OMB review of regulations; and (3) the preparation of a regulatory impact analysis for any "major" regulations. A "major" regulation is one with an annual effect on the economy of $100 million or more, or one having certain other significant economic effects. Pursuant to an agreement with OMB, only major legislative regulations are subject to OMB review. (The IRS provides for publication of a semi-annual agenda of regulations).

The Regulatory Flexibility Act

The Regulatory Flexibility Act (P.L. 96–354) requires the IRS to prepare an analysis of the impact on small business of certain regulations. These analyses are required only for legislative regulations, as opposed to regulations that merely provide interpretations of the law.

The Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (P.L. 96–511) requires Office of Management and Budget review and approval of any "in-

[7] Temporary regulations, designed to answer questions on an interim basis when timing is critical, are issued without notice and hearing. Frequently, a notice of proposed rulemaking, identical to a temporary regulation, will be simultaneously issued.

formation collection request" imposed by an agency after April 1, 1981, before compliance with the request can be required. Treasury regulations that impose such requests are subject to OMB review under this Act.

3. Revenue rulings and ruling letters

The Internal Revenue Service publishes revenue rulings and procedures in the Internal Revenue Bulletin. Revenue rulings and procedures, like Treasury decisions, may be cited as precedent and the positions taken in them generally are binding on the IRS. These interpretations apply the tax law to a specific fact pattern rather than providing broad, general rules. Such rulings and procedures generally are developed by personnel in the Office of Chief Counsel, other than those drafting regulations, and are subject to review by many of the same offices that review regulations. Typically, however, revenue rulings and procedures are not published in proposed form before being adopted.

The IRS also interprets the tax law through ruling letters and technical advice memoranda. These interpretations generally are subject to lesser review than are regulations and rulings. Ruling letters are issued to a specific taxpayer and may be relied upon only by that taxpayer and only with regard to the specific transaction addressed by the letter.

E. Taxpayer Amnesty Arrangements

Many experts believe tax evasion is increasing in the United States. According to IRS estimates, the failure of taxpayers to report an estimated $300 billion in income results in a revenue loss for 1983 of about $100 billion. Some experts have suggested that the revenue loss may be significantly higher. The group of taxpayers who are not reporting all their taxable income includes taxpayers who never have filed tax returns and taxpayers who are disguising their income by using cash or barter transactions for which no records are kept.

An approach attempted by at least one state (Illinois) and, for a limited period in the 1930's and 1940's, by the IRS to reach some of the income of the "underground economy" was an amnesty arrangement. Under such an arrangement, taxpayers who voluntarily report previously unreported income are protected from criminal prosecution for tax evasion. However, under such a plan, they are liable for all taxes, interest charges, and civil penalties. Some people have suggested that the IRS should now adopt such an arrangement.

From 1934–1951, the IRS followed a case-by-case practice of not recommending criminal prosecution in cases in which taxpayers made voluntary disclosures before investigation by the IRS had been initiated. The first 18 months of the program netted $500 million from taxpayers who utilized the program. In 1952, this policy was abandoned after charges were made that the program was being utilized by taxpayers who were near indictment and by professional criminals. In addition, difficulties with administration of the program led to taxpayers' receiving immunity and subsequently defaulting on their obligations.

In 1961, a news release was issued by the IRS suggesting that the new conversion to automatic data processing by the IRS, which improved the Service's ability to locate noncompliance, offered a good opportunity to taxpayers to make voluntary disclosures. The news release pointed out that although the Service would not guarantee immunity from criminal prosecution, its likelihood was small in cases of true voluntary disclosure. (A current IRS policy statement includes voluntary disclosure as a criterion in determining whether a case warrants criminal prosecution.)

More recently, the Nevada district office of the IRS attempted to adopt an amnesty arrangement applicable to dealers in casinos. However, unrelated problems arose and the plan was abandoned prior to implementation.

The argument supporting the adoption of an amnesty program is that it provides an opportunity to taxpayers to correct their past actions without fear of prosecution and would, therefore, include taxpayers in IRS records who may not previously have been there. In addition, it is argued that such a program would collect tax rev-

enues that the IRS would not have the resources or manpower otherwise to collect.

Proponents of a taxpayer amnesty arrangement suggest that the following three groups would take advantage of the program:

1. Those taxpayers who never have filed tax returns and fail to do so now because of fear of criminal prosecution;
2. Those taxpayers who previously have failed to report certain types of income; and
3. Those taxpayers who have started an "underground" business and who now wish to legitimatize what they are doing because of guilt, business success, or a desire to be law-abiding.

Thus, the argument is made that these taxpayers remain tax evaders merely because of fear of the consequences and they should be given the opportunity to make amends with the assurance they will not be prosecuted. Many taxpayers currently are unaware that a voluntary disclosure can be made and what the consequences are of making such a disclosure.

In addition, an amnesty program may increase public awareness of the size of the "underground economy" and may be perceived as a visible attempt to reduce this problem.

Those who oppose an amnesty program contend that allowing such a nondiscretionary amnesty in fact may encourage both continuing and future noncompliance, because some taxpayers will believe that the IRS would repeat the program in the future. The program also might be perceived as inequitable by all taxpayers who do report their income in compliance with the tax law, and as contrary to the IRS policy of administering the tax laws uniformly.

Furthermore, it is argued that implementation of the program will encounter the same administrative problems that occurred in the prior IRS amnesty program. However, if the amnesty program were limited in duration (e.g., one year) and was not made available to taxpayers currently under investigation by the IRS, the argument is made that the program would not become an insurance policy for all taxpayers who have cheated in the past or who will cheat in the future.

F. Taxpayer Safeguard Provisions

In General

During its consideration of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Congress addressed several problems related to the collection of taxes by the Internal Revenue Service. First, in recognition of the hardships faced by taxpayers during the collection process, the dollar amounts of items of a taxpayer's property that are exempt from levy were increased. Second, a statutory time limit with respect to when a lien against property must be released was imposed. Third, the law was amended to require that a taxpayer be provided with written notice before a levy upon property. Fourth, the period of time for redeeming real property that has been sold after being seized was extended. Finally, the law was amended to provide that, in the case of a wrongful sale of property by the United States, a third party will be allowed to recover an amount not exceeding the fair market value of the property immediately before levy. These provisions, as amended by TEFRA, are described below.

Property Exempt From Levy

Present law exempts certain property from levy (Code sec. 6334). Among other items, this exemption covers (1) fuel, provisions, furniture, and personal effects; (2) books and tools of a trade, business, or profession; and (3) wages, salary, or other income.[8]

For a taxpayer who is head of a family, there is an exemption of $1,500 for fuel, provisions, furniture, and personal effects in his household, and for arms for personal use, livestock, and poultry.[9]

There is a $1,000 exemption for books and tools necessary for the trade, business, or profession of the taxpayer.[10]

The exemption for wages, salary, and other income is $75 per week plus $25 per week with respect to each individual over half of whose support is received from the taxpayer, who is a spouse or dependent of the taxpayer, and who is not a minor child of the taxpayer with respect to whom amounts are exempt from levy pursuant to a support judgment entered prior to the date of levy.[11]

Release of Lien

Under present law, any lien imposed with respect to any internal revenue tax must be released no later than 30 days after either (1) the liability for the amount assessed, together with all interest in respect thereof, has been fully satisfied or has become legally unen-

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[8] Also exempt from levy under this provision are wearing apparel and school books, unemployment benefits, undelivered mail, certain annuity and pension payments, workmen's compensation, and judgments for support of minor children.

[9] Prior to TEFRA, this exemption was $500.

[10] Prior to TEFRA, this exemption was $250.

[11] Prior to TEFRA, this exemption was $50 per week plus $15 per week for each dependent.

forceable, or (2) acceptance of a bond that is conditioned upon the payment of the amount assessed, together with all penalties and interest (Code sec. 6325).[12]

Notice Before Levy

In general, present law provides that levy upon property may be made if the taxpayer neglects or refuses to pay tax within 10 days after notice and demand (Code sec. 6331). Collection of tax by levy is lawful without regard to the 10-day period, if the Secretary makes a finding that the collection of tax is in jeopardy.

Provided that the collection of tax is not in jeopardy, levy may be made upon the salary, wages, or other property of any person with respect to any unpaid tax only after the Secretary has notified such person in writing of his intention to make such levy.[13]

This notice must be given in person, left at the dwelling or usual place of business of such person, or sent by registered or certified mail to such person's last known address, no less than 10 days before the day of the levy. A single notice is sufficient to cover all property of the taxpayer subject to levy.

The effect of a levy on salary or wages payable to, or received by, a taxpayer is continuous from the date the levy is first made until the liability out of which the levy arose is satisfied or becomes unenforceable by reason of lapse of time. The Secretary must promptly release such a levy when the liability out of which the levy arose is satisfied or becomes unenforceable by reason of lapse of time, and must promptly notify the person upon whom such levy was made that the levy has been released.

Redemption of Property

Under present law, the owners of real property that is sold after a seizure, as well as their heirs, executors, or administrators, or any person having an interest therein, or a lien thereon, or any person in their behalf, may redeem the property at any time within 180 days after the sale (Code sec. 6337).[14]

Amount of Damages in Case of Wrongful Levy

In the case of an alleged wrongful levy, a person (other than the person against whom is assessed the tax out of which such levy arose) who claims an interest in, or lien on, the property levied upon may bring a civil action against the United States in a U.S. district court (Code sec. 7426). If the court determines that there has been a wrongful levy, then the court may (1) order the return of the property if the United States is in possession thereof; (2) grant a judgment for the amount of money levied upon; or (3) if the property is sold, grant a judgment for an amount not exceeding the greater of the amount received by the United States from the sale or fair market value of the property immediately before the levy.[15]

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[12] Prior to TEFRA, there was no statutory time limit for the release of a lien.

[13] Prior to TEFRA, in the case of a levy upon property, other than salary or wages, there was no statutory provision that required notice before levy.

[14] Prior to TEFRA, the redemption period was 120 days.

[15] Prior to TEFRA, if the property had been sold, the judgment of the district court could not exceed the amount received by the United States from such sale.

Notice of Procedural Safeguards

The conferees, in their consideration of TEFRA, indicated their concern that, in certain cases, taxpayers may not be aware of the existing statutory or administrative rights and procedural safeguards that are available to them. Furthermore, the conferees believed that distribution of information concerning taxpayer rights at the time of the initial IRS contract with the taxpayer regarding an audit and at appropriate stages during examination and collection proceedings would assure that more taxpayers are adequately apprised of their rights and the procedures available to them. Thus, the conferees requested that the IRS consider the sufficiency and timeliness of information sent to taxpayers regarding their rights during examination, appeals, and collection. The results of this study are to be reported to the House Committee on Ways and Means and the Senate Committee on Finance.[16]

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[16] H. Rep. No. 97-760 (97th Cong. 2d Sess.) 616.